IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 383 of 2007
With
CIVIL APPLICATION No. 13659 of 2007
In APPEAL FROM ORDER No. 383 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONAL TEXTILE COPORATION LTD - Appellant
Versus
AHMEDABADNI SAMASTA MODH CHAMPANERI VANIK GNATI & 12 - Respondents

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Appearance :
MR KAMALBHAI TRIVEDI, ADVOCATE GENERAL WITH MR RS SANJANWALA; MR SH SANJANWALA, SENIOR COUNSEL WITH MR TARAK DAMANI for the Appellant.
MR S.I. NANAVATI, SENIOR COUNSEL WITH MR CHETAN K PANDYA for the Respondents.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 06/12/2007

ORAL JUDGMENT

This Appeal from Order has been preferred by original defendant No.2 (lessee of a perpetual lease) against the order dated 15th October,2007 below Notice of Motion Application Exh-52 in Regular Civil Suit No.5110 of 1992 passed by City Civil Court at Ahmedabad, whereby though transfer of suit property is allowed by clause 6 of perpetual and permanent lease, defendant No.2 has been directed not to transfer the suit property to third party till final disposal of the Suit, filed mainly for the reason that rent is not paid. In fact, rent is already deposited by appellant before Trial Court, with interest and cost. Thus, Civil Suit is a suit for forfeiture for non-payment of rent.

2. Facts of the case :

2.1 It appears from the facts of the case that a lease deed has been entered into between the original plaintiff and defendant no.1 on 4th February,1955, for the suit property, which is assignable, perpetual and permanent lease and the amount of rent fixed was Rs.9,601/-. Clause 6 of lease agreement allows transfer.

2.2 It appears from the facts of the case that the suit has been instituted by the lessor for recovery of possession of the suit property in the year 1992.

2.3 It appears from the facts of the case that the alleged notice (receipt of which has been highly disputed by the defendants), is for non-payment of the rent only. Thus, it is notice under Section 114 of the Transfer of Property Act,1882.

2.4 It appears from the facts of the case that the rent has been deposited on 31st July,2007 and 1st October,2007. This amount is also inclusive of the interest upon the rent as well as cost of litigation, before the Trial Court.

2.5 Defendant No.1 company i.e. The Ahmedabad Jupiter Spinning & Manufacturing Company Limited, has been taken over by National Textile Corporation Holdings, which was ultimately taken over by National Textile Corporation (Gujarat) by various Notifications especially under The Sick Textile Undertakings (Notification) Ordinance,1974. Section 3 and 4(1) thereof are relevant and referred time and again, read as under:

"CHAPTER II

ACQUISITION OF THE RIGHTS OF OWNERS OF SICK TEXTILE UNDERTAKINGS
Acquisition of rights of owners in respect

of sick textile undertakings.

3.(1) *On the appointed day, the right, title and interest of the owner in relation to every sick textile undertaking shall stand transferred to, and shall vest absolutely in, the Central Government.*

(2) *Every sick textile undertaking which stands vested in the Central Government by virtue of sub-section (1) shall, immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation.*

General effect of vesting.
4(1) *The sick textile undertaking referred to in section 3 shall be deemed to include all assets, rights lease holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the owner-ship, possession, power of control of the textile company in relation to the sick textile undertaking, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto."*
(Emphasis supplied)

2.6 BIFR has already drafted the scheme wherein the disputed property has been interwoven. BIFR scheme has been finalized on 19th February,2002. Before finalization of the Scheme by BIFR, a public notice was given. Never any objection was raised by the original plaintiffs i.e. by the present respondents.

2.7 Hon'ble Supreme Court has passed an order dated

27th September,2002 in the case of **NTC (IDA) Employees Association vs. Union of India and others** in **Special Leave Petition (Civil) No.16732 of 1997** and held that the aforesaid scheme sanctioned by BIFR be implemented.

2.8 Defendant No.2 gave a public advertisement for getting highest price, to give sub-lease for the land admeasuring 70,738.89 sq.mtrs.. Stay application has been preferred by the original plaintiffs for the entire land whereas the plaintiff is concerned with Final Plot No.113 admeasuring 31,884 sq.mtrs. of the land. Thus, the land, which was given on perpetual lease is now converted into Final Plot No.113 under Town Planning Scheme under the Gujarat Town Planning and Urban Development Act,1976, which is now, admeasuring 31,884 sq.mtrs. and the stay has been granted by the Trial Court for the whole land.

2.9 The possession of the property in question is with the appellant (original defendant No.2).

[B] <u>Arguments of the appellant (original defendant No.2)</u>:

3. It is contended by learned counsel for the appellant (original defendant No.2) that looking to the nature of lease of the property in question, as per the

lease agreement, it is a perpetual lease and is for the all time to come. The rent referred to in the lease agreement is already deposited before the Trial Court; not only the principal amount but also the interest and the cost. Notice as alleged by the original plaintiff was given by the original plaintiff under section 114 of the Transfer of Property Act,1882, has never been received by the appellant – original defendant No.2.

3.1 Learned counsel for the appellant vehemently submitted that original plaintiff has, only a right to receive the rent, looking to the provisions of Section 114 of the Transfer of Property Act,1882. Main reason for filing of the Suit is for non-payment of the rent of Suit premises. Learned counsel for the appellant has taken this Court to the pleadings and reply and pointed out that though the rent was tendered, it was not accepted by the original plaintiff. Rent with interest and cost, has been deposited on 31st July,2007 and on 1st October,2007 with the Trial Court. The suit property is now statutorily vested in original defendant No.2, as per Sections 3 and 4 of the Notification, as referred hereinabove.

3.2 Learned counsel for the appellant further

submitted that BIFR has already sanctioned the scheme. The suit property is forming part of the scheme, which has been also referred by Hon'ble Supreme Court in Special Leave Petition preferred by NTC (India) Employees Association and the said scheme is having statutory force. As per the impugned order, if stay is continued, the scheme cannot be implemented. A public advertisement has been given for grant of sub-lease of suit property, wherein it is made clear that it will be subject to, the suit filed in City Civil Court at Ahmedabad as well as subject to terms and conditions of the lease agreement. The transferee, will be abide of lease agreement terms. No facts were suppressed by defendant No.2, even in public advertisement.

3.3 Learned counsel for the appellant submitted that looking to the alternative prayer, especially made in para 11(C) of the plaint, the stay as prayed for ought not to have been granted by the Trial Court. The present appellant and defendant No.2 have taken a loan of Rs.226,00,00,000/- (Rupees Two Hundred Twenty Six Crores only). Highest bidder has already offered Rs.60.60 Crores for the suit property.

3.4 Learned counsel for the appellant (original

defendant no.2) has also relied upon several decisions and pointed out that there is no prima facie case in favour of the original plaintiff. The plaintiff is having right to get rent only, which has already been deposited by the present appellant before the Trial Court. Balance of convenience is also not in favour of the original plaintiff. Looking to the BIFR Scheme and implementation thereof within stipulated time and looking to prayer 11(C) in the plaint and the fact that the present appellant has taken loan of Rs.226 Crores, there is no balance of convenience in favour of the original plaintiff but on the contrary, irreparable loss will be caused to the original defendant No.2, if stay is granted in favour of the original plaintiff.

3.5 Learned counsel for respondent No.13 (original defendant no.1) submitted that he is adopting the arguments, canvassed by learned counsel for the appellant (original defendant no.2) and also submitted that original defendant no.1 has not relinquished or renounced the character of lessee. The deposition/payment of the rent before the Trial Court is sufficient proof for the aforesaid fact. Learned counsel for defendant No.1 submitted that as the lease is for perpetual period, the transferee will get right as lessee and all terms and

conditions of the agreement will be binding to him. Learned counsel for the appellant has relied upon following decisions:

(i) 1969(1) SCC 714
(ii) (2002)5 SCC 440
(iii) (2006)3 SCC 434

[C] <u>Arguments canvassed by the defendants (original plaintiffs)</u>:

4. Learned counsel for original plaintiffs submitted that as per Section 111 (g) of the Transfer of Property Act,1882, the plaintiff is entitled to get their property back from original defendant Nos.1 and 2. Learned counsel for plaintiffs has taken this Court to the various clauses of the lease deed and pointed out that if the rent is not paid for more than 3 years, Notice can be given for forfeiture, of the suit property. In fact, the notice has been given by the original plaintiff, which has been received by original defendant Nos.1 and 2.

4.1 It is further submitted that the case is not covered under Section 114 of the Transfer of Property Act,1882, but it is covered under Section 114-A of the Transfer of Property Act,1882 and, therefore, mere deposition of the amount of rent will not be useful to defendant Nos.1 and 2. Even after receipt of Notice, no

rent was paid and the plaintiff has right of re-entry and the same has accrued. Learned counsel for the defendants submitted that the amount of rent has been deposited at a very belated stage and therefore also, they are not entitled to get any relief in this Appeal from Order.

4.2 It is also pointed out that the defendant is claiming ownership of the suit property and, therefore, if the lessee is claiming ownership under section 111(g) of the Act,1882, will come in an operation and, therefore also, the plaintiff is entitled to get the possession of the suit property. Looking to this fact, there is a prima facie case in favour of the original plaintiff. Balance of convenience is also in his favour of the original plaintiff and if the property is allowed to be transferred, it will cause an irreparable loss to the plaintiff. This aspect of the matter has been correctly appreciated by the Trial Court and, therefore, the order passed by the Trial Court may not be interfered by this Court in this Appeal from order. Learned counsel for the plaintiffs, has relied upon the following decisions :

(i) (1992)3 SCC 1
(ii) (2000)1 GCD 576
(iii) AIR 1953 SC 228
(iv) (1980)4 SCC 430
(v) (1988)2 SCC 77
(vi) AIR 2005 SC 104

(vii) 1979(2) GLR 533

In view of the aforesaid decisions, there is no substance in this Appeal from order and therefore, the same may be dismissed.

[D] REASONS :

5. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, the order dated 15th October,2007 below Notice of Motion Application Exh-52 in Regular Civil Suit No.5110 of 1992 passed by City Civil Court at Ahmedabad, deserves to be quashed and set aside, for the following facts and reasons:

(i) Looking to the nature of lease deed, as per clause 6 of the lease agreement, it appears that it is an assignable, perpetual and permanent lease. Even if the case of the plaintiff is taken at its highest pitch, alleged notice given by the plaintiff to the defendant speaks only about non-payment of rent. Non-payment of rent is a sole ground referred in the notice. Of course, it is vehemently submitted by learned counsel for defendant Nos.1 and 2 that never said Notice has been

received by them, but, looking to the reasons given in the notice, the notice is only for non-payment of rent. It also, prima facie, appears that rent along with interest and cost has already been deposited by defendant Nos.1 and 2 before the Trial Court, during pendency of the Suit. Section 114 of the Transfer of Property Act, reads as under:

> ***"114. Relief against forfeiture for non-payment of rent.*** *- Where a lease of immovable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred."*
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> (Emphasis supplied)

Thus, Section 114 gives relief to lessee against forfeiture, for non-payment of rent-

(a) if he, pays or tenders, the rent in arrears with interest and cost of the suit; or

(b) gives such security as the Court thinks sufficient for making payment, within 15 days.

In such cases, the Court may, in lieu of making a decree for ejectment, relieve a lessee against a

forfeiture and lessee shall be allowed to hold leased property.

In view of the aforesaid provision of Transfer of Property Act,1882, once the whole amount of rent has already been deposited with interest and with cost, Court will in lieu of making a decree for ejectment, pass an order, relieving lessee against for forfeiture, as per the decision rendered by Hon'ble Supreme Court in the case of **R.S.Lala Praduman Kumar V/s. Virendra Goyal and others** reported in **(1969)1 SCC 714**, especially, in para-5, reads as under:

> *"5. In our view, there is no substance in any of the contentions.*
>
> ***Section 114** of the Transfer of Property Act provides:*
>
> *"Where a lease of immovable property has been determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred."*
>
> *The covenant of forfeiture of tenancy for non-payment of rent is regarded by the courts as merely a clause for securing*

> *payment of rent, and unless the tenant has by his conduct disentitled himself to equitable relief the courts grant relief against forfeiture of tenancy on the tenant paying the rent due, interest thereon and costs of the suit. Jurisdiction to relieve against forfeiture for non-payment of rent may be exercised by the Court if the tenant in a suit in ejectment at the hearing of the suit pays the arrears of rent together with interest thereon and full costs of the suit. In terms Section 114 makes payment of rent at the hearing of the suit in ejectment a condition of the exercise of the Courts' jurisdiction but an appeal being a rehearing of the suit, in appropriate cases it is open to the appellate Court at the hearing of the appeal to relieve the tenant in default against forfeiture. Passing of a decree in ejectment against the tenant by the Court of First Instance does not take away the jurisdiction of the appellate Court to grant equitable relief. This is the view taken by the High Courts in India : see Chilukuri Tripura Sunderamma v. Chilukuri Venkateswarlu alias Ramchandram and others; Janab Vellathi and others v. Smt.K.Kadervel Thayammal; Shri Kishanlal and others v. Ramnath Jankiprasad Ahir and others; Budhi Ballabh and others v. Jai Kishan Kandpal. The High Court of Bombay in cases arising under the Bombay Rents, Hotel and Lodging House Rates Control Act,1947, has also expressed the same opinion in Bhagwant Rambhau Khese v. Ramchandra Kesho Pathank."*
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> *(Emphasis supplied)*

The aforesaid decision makes it explicitly clear that covenant of forfeiture of tenancy for non-payment of rent is regarded by the courts as merely a clause for securing payment of rent.

(ii) It has been held by Hon'ble Supreme Court in the

case of **Rakesh Wadhawan and others V/s. Jagdamba Industrial Corporation and others** reported in **(2002)5 SCC 440**, especially in para 20 and 21, as under:

> *"20. Even if Section 13(2)(i) and the proviso would not have been enacted there was Section 114 of the Transfer of Property Act to take care of such situation. The provision in the rent control legislation which obliges the tenant to pay or tender the arrears of rent during the course of hearing and relieve the tenant from the consequences of default in payment of rent is founded on the doctrine of forfeiture of lease for non-payment of rent and equitable principle of granting relief against forfeiture within the exercise of discretion vesting in the court. The Transfer of Property Act,1882 did not in terms apply to the State of Punjab, however, principles underlying or contained in such of the provisions of the Transfer of Property Act as are essentially the principles of equity, justice and good conscience have been held applicable to the State of Punjab and Haryana. Section 114 of the TP Act embodies one such principle. (See Namdeo Lokman Lodhi v. Narmadabai, Guru Nanak Ex Servicemen Coop. T.F. Society Group No.2 v. State of Haryana and Aziz-Ud-Din V. Guru Bhagwan Das). The rule of equity enshrined in Section 114 of the Transfer of Property Act is: where a lease of immovable property has determined by forfeiture for non-payment of rent and the lessor files a suit for ejectment of the lessee, the court exercises a discretionary jurisdiction of passing an order relieving the lessee against the consequences of forfeiture if at the hearing of the suit the lessee pays or tenders to the lessor the rent in arrears with interest and costs or furnishes such security as the court thinks sufficient. Having appointed a time for payment, the court still retains jurisdiction to extend the time (Chandless Chandless v. Nicholson). Even the time*

> *appointed by a consent decree can be extended (Amiya De v. Dhirendra Nath Mandal). The discretion conferred by Section 114 of the TP Act is of wide amplitude guided by the principles of justice, equity and good conscience and the court would examine the conduct of the parties, the comparative hardship and lean in favour of one whose hands are clean (Namdeo Lokman Lodhi v. Narmadabai). The discretion to grant relief against forfeiture is available not only to the trial court but also to the appellate court (R.S.Lala Praduman Kumar V. Virendra Goyal).*
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> *21. The question which stares at us is : whether in enacting Section 13(2)(i) and proviso thereto can we assume that the legislature intended to place the tenants in a situation worse than what it would have been under the principles deducible from Section 114 of the TP Act and even if this provision would not have been there? We cannot attribute such misplaced wisdom to the legislature without being uncharitable to it. We are definitely of the opinion that by engrafting Section 13(2)(i) and proviso in the body of the Act the legislature intended to confer on the tenants a protection, larger and more beneficial than what it would have been if the provision was not enacted."*
>
> *(Emphasis supplied)*

In view of the aforesaid decision, Section 13(2)(i) of the Bombay Rents, Hotel and Lodging House Rates Control Act,1947, has been compared with Section 114 of the Transfer of Property Act,1882, and it has been held by Hon'ble Supreme Court that if the amount of rent is paid, the forfeiture of the lease generally will not be granted by the Court. Looking to the facts of the case, this Court is not deciding at this stage, whether notice

as alleged by the original plaintiff has been received by defendant Nos.1 and 2 or not, as this is Exh-52 i.e injunction application stage only. Suffice it will be for this Court to point out that, even if, the notice is presumed to have been served, it is only for non-payment of the rent and, therefore, prima facie, Section 114 of the Transfer of Property Act,1882 is applicable and not Section 114-A thereof. Once the amount of rent is deposited before the Trial Court, under Section 114 of the Act,1882, in view of the aforesaid decision, original plaintiff is entitled to get their rent only. Property of defendant no.1 company was taken over by defendant no.2, as per Sections 3 and 4 of the Sick Textile Undertakings (Nationalisation) Ordinance,1974. Thus, all rights, which are vested in defendant No.1, now, will be vested in defendant No.2, including lease hold rights in the suit property. Lease is of perpetual nature. Rent is deposited. As per clause 6 of lease agreement, transfer is permissible. Thus, there is no prima facie case in favour of the original plaintiff. This aspect of the matter has not been properly appreciated by the Trial Court.

(iii) It also appears from the facts of the case that defendant no.1 was declared as a sick unit. BIFR has

already finalized scheme for the property of defendant no.1 company. It is an admitted fact that before finalization of the scheme, public notice was given. Never any objection was filed by the original plaintiff. The scheme was also referred before Hon'ble Supreme Court in Special Leave Petition (Civil) No.16732 of 1997 in a proceedings initiated by NTC (India) Employees Association and while disposing of Special Leave Petition vide order dated 27th September,2002, it has been observed as under:

> *"Intervention application is dismissed.*
>
> *We have been informed that BIFR has already formulated eight schemes which stand approved by all concerned and agencies. Let the schemes as sanctioned by BIFR be implemented. The Special Leave Petition and the transfer petition stand disposed of accordingly"*
>
> *(Emphasis supplied)*

Thus, the scheme having a statutory force is bound to be implemented and executed. The land is statutorily vested in defendant No.2. It is stated by learned counsel for appellant (defendant No.2) that they have taken loan of Rs.226 Crores. Sizeable amount of public money is involved. Suit land is a part and parcel of the scheme. The public notice was given by defendant no.2 wherein highest bidder has offered 60.60 Crores for the suit property. Highest bidder will be bound by the terms and

conditions of the lease deed. Public Notice for auction given by defendants, also reveals the fact that transfer will subject to the litigation already pending in the Trial Court and will also be subject to terms and conditions of lease. As the lease was perpetual lease, for indefinite period, transferee i.e. highest bidder will continue to give rent to the lessor i.e. to the original plaintiff. Looking to -

(a) the alternative prayer under Section 11(c) of the plaint; and
(b) Section 114 of the Transfer of Property Act,1882; and
(c) the fact that the rent with interest and cost is already deposited; and
(d) the lease is perpetual lease, in fact, the plaintiff is entitled to get the rent only;
(e) Clause 6 of lease agreement allows transfer of property;

no irreparable loss will be caused to the plaintiff, if stay as prayed for is not granted. Likewise no balance of convenience is in favour of the original plaintiff.

Whereas looking to -

(a) the loan taken by defendant No.2 is of Rs.226 Crores; and
(b) the fact that suit property is forming part of the scheme formed by BIFR; and
(c) as per the order passed by Hon'ble Supreme

Court in Special Leave Petition (Civil) No.16732 of 1997; and

(d) the fact that the highest bidder has offered 60.60 Crores to take over the suit property with a condition to abide by all the terms and conditions of the lease agreement and subject to the outcome of the suit, -

irreparable loss will be caused to defendant nos.1 and 2, if stay as prayed for is granted. This aspect of the matter has been properly appreciated by the Trial Court. BIFR scheme and its importance is stated in para 326 of the judgment delivered by Hon'ble Supreme Court in the case of **(2006)3 SCC 434,** especially para 326, which reads as under:

> *"326. It is not in dispute that the writ petitioners merely filed an affidavit on 12-7-2005 before the High Court alleging that the sale of surplus land by NTC was in violation of this Court's order and/or the scheme framed by BIFR. If the prayer in the writ petition had not been amended, we fail to understand, as to on what premise the High Court proceeded to consider the question as regards the alleged violation of the order of this Court, as also the BIFR Scheme by NTC, for the purpose of setting aside the sale. In a collateral proceeding, the High Court, in our opinion, could not issue any direction which would not only be contrary to a statutory scheme but defeasive of the purport and object for which the SICA was enacted. Furthermore, it was none of the concern of the respondent-writ petitioners as to how BIFR calculated the financial viability by way of sale of surplus land by NTC. It was equally impermissible for the*

> *High Court to consider as to whether despite there being a provision for multi-mill aggregation in terms of DCR 2001, the same had been taken into consideration under the BIFR Scheme or not. We have noticed hereinbefore that for the purpose of considering the validity or otherwise of the sale in terms of the BIFR Scheme itself, ASC was appointed wherein a member of BIFR was also represented. We are, therefore, of the firm opinion that the judgement of High Court in this behalf is not correct."*
>
> (Emphasis supplied)

Thus, It has been held by Hon'ble Supreme Court that no stay should be granted. In the facts of the present case, once the scheme is drafted by BIFR, it is none of the concern of the plaintiff as to how BIFR has calculated the financial viability. The scheme drafted by BIFR is not under challenge. In the facts of the present case, it is not the case of the original plaintiff that BIFR scheme is not framed as per law. Balance of convenience is in favour of defendant No.2.

[E] Delayed payment of rent :

6. Learned counsel for the original plaintiff submitted that delay in payment of rent never absolves the defendant no.2 from forfeiture and has relied upon decision rendered by Hon'ble Supreme Court reported in **(1992)3 SCC 1**, especially in paras 12 and 13 thereof. This contention is not accepted by this Court mainly for the reason that mere delay in depositing rent, interest

and cost, never oust the case of the defendants out of Section 114 of the Transfer of Property Act,1882. On the contrary, looking to the public advertisement, it is categorically mentioned by the defendant No.2 that this transfer will be subject to litigation pending before the Trial Court. The transferee will abide by all terms and conditions of the lease agreement. Lease is perpetual lease. Thus, behaviour and conduct of defendant nos.1 and 2 are not objectionable, otherwise, right of defendant no.1 in the property are now, vested in defendant no.2 and defendant no.2 is executing BIFR scheme, which is having statutory force and when scheme is not under challenge, the trial court had no reason to grant stay against the transfer of suit property. Virtually it amounts to the stay against the scheme framed by BIFR. So far as late payment of rent is concerned, it is submitted by defendant Nos.1 and 2 that the rent was offered by them, but, it was not accepted and denied by original plaintiff. As this is injunction application stage, this Court is not much analyzing the evidence on record but suffice it will be to say that admittedly, the rent is deposited before the Trial Court with interest and cost and as per the decision rendered by Hon'ble Supreme Court as stated hereinabove, the covenant of forfeiture of lease for non-payment of rent is regarded by the courts

as merely a clause for securing payment of rent. Similar is the provision under Section 12(3) of Bombay Rents, Hotel and Lodging House Rates Control Act,1947, which is for eviction on the ground of arrears of rent. It is founded on forfeiture of lease on the ground of non-payment of rent. In both cases, it is held by Hon'ble Supreme Court reported in **2002(5) SCC 440,** once the amount of rent is deposited normally lessor will be entitled to the rent and no eviction decree or forfeiture can be passed. Therefore, the contention that stay should be granted by the Trial Court, if there is delayed payment of arrears of rent, is not accepted by this Court.

7. Learned counsel for the original plaintiff submitted that there are avernments made in the written statement by defendant Nos.1 and 2 that they have become owners of the property in question and, therefore also, Section 111(g) of the Transfer of Property Act will be applicable against the original lessor. This contention is also not accepted by this Court, as, defendant Nos.1 and 2 have categorically pointed out that they have not relinquished or renounced the character of lessee. As per advertisement of public auction, for grant of sub-lease, the terms and conditions of the lease have been kept

binding upon sub-lessee. Learned counsel for the petitioner relied upon decisions reported in **AIR 1950 SC 228** but as stated hereinabove, looking to the overall conduct of defendant Nos.1 an 2 and looking to the fact that suit property has been interwoven in the scheme of BIFR and looking to the auction notice given to defendant No.2 and their readiness to abide by lease agreement as well as their readiness to keep sub-lease abide by outcome of suit and by the terms of lease agreement, prima facie, makes their case different from the said decisions relied upon by the counsel for respondent (original plaintiff). Learned counsel for the respondent (original plaintiff) relied upon decisions reported in (2002)5 SCC 440 ; (1980)4 SCC 430; 1988(2) SCC 77; 1992(3) SCC 1; 1979(2) GLR 533 and pointed out that the property may not be allowed to be further transferred from the hands of defendant No.2. None of the aforesaid judgments is helpful to the plaintiff mainly for the reason that the lease is for perpetual period. As per clause 6 thereof, lease is assignable or transferable. The rent, interest and cost is already deposited. BIFR has already drafted scheme, which is having statutory force and as per Hon'ble Supreme Court's order, it is to be implemented. Highest bidder offered for sub-lease Rs.60.60 Crores and highest bidder will abide by terms

and conditions of the lease and, looking to the provisions of the Act,1882 especially Section 114 thereof, covenant of forfeiture of tenancy for non-payment of rent is regarded by the courts as merely a clause for securing payment of rent. Here admittedly, this amount has been deposited with interest and cost. These aspects of the matter has not been appreciated by the Trial Court. In view of the aforesaid facts, there is no prima facie case in favour of the original plaintiff. Balance of convenience is also not in favour of the original plaintiff. No irreparable loss will be caused to the original plaintiff, if the stay as prayed for is not granted; whereas looking to the facts of the case, irreparable loss will be caused to defendant No.1 and 2, if stay as prayed for is granted.

8. Looking to the lease agreement, it appears that land is now converted into Final Plot No.113, upon finalization of the Town Planning Scheme, under The Gujarat Town Planning and Urban Development Act and has been alloted Final Plot No.113 admeasuring about 31884 sq.mtrs. only; whereas stay prayed for by the plaintiff is for whole land admeasuring 70,738.89 sq.mtrs. of land and whatever stay as prayed for by the plaintiff, is granted by the Trial Court, without properly appreciating Form-F i.e. redistribution of the property under the

provisions of the Act,1976, it will cause an irreparable loss to the defendant no.2. As this is only notice of motion stage, detail evaluation of evidence is avoided, despite, the arguments made in detail and at length analyzing thereof, I am not going much into details, so as to lessen the burden of this judgement. Several authorities have been cited, but which are necessary have been referred for the disposal of the present Appeal from Order.

9. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the order dated 15th October,2007 below Exh-52 (notice of motion) in Civil Suit No.5110 of 1992 passed by City Civil Court at Ahmedabad is hereby quashed and set aside. This Appeal from order is allowed.

In view of the aforesaid order passed in Appeal from Order, Civil Application No.13659 of 2007 is also disposed of accordingly.

(D.N.PATEL,J)

10. Learned counsel for the plaintiff – present respondent prayed for stay of the operation of the aforesaid order. It is opposed by the learned counsel for

the appellant (original defendant No.2) as well as by counsel for respondent No.13 (original defendant No.1) and pointed out that looking to the BIFR scheme, the same has to be implemented and the offer made by the highest bidder has to be accepted within stipulated time, otherwise, he may withdraw his offer. Looking to the facts and circumstances of the case and the provisions of the Act,1882, and for the reasons stated hereinabove, the request made by learned counsel for the respondent (original plaintiff) is not accepted by this Court.

(D.N.PATEL,J)

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